

T. R. Krueger, P.C.
Attorneys & Counselors

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38 Hope Farm Road
Missouri City, Texas 77459

Telephone: (281) 778-8934
Facsimile: (281) 778-8937

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TO:	USPTO	FROM:	Tenley Krueger
COMPANY:	Mail Stop Appeal Brief-Patents	DATE:	2/16/2006
FAX NUMBER:	571-273-8300	TOTAL NO. OF PAGES INCLUDING COVER:	12
PHONE NUMBER:	[Click here and type phone number]	SENDER'S REFERENCE NUMBER:	COS-926
RE:	Notice of Non-Compliant Appeal Brief	YOUR REFERENCE NUMBER:	10/699,956

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please see the attached Response to the Notice of Non-Compliant Appeal Brief.

Please note that the Notice dated 02/02/2006 was a duplicate Notice (see, earlier Notice dated 01/19/2006), to which a Response was filed via Express Mail No. EQ 190570292 US on January 30, 2006.

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APPLICATION NO.	FILED DATE	INVENTOR	CLASSIFICATION	CONTINUATION NO.
10/699,956	11/03/2003	Michael A. McLeod	COS-926 (API-1125US)	5094
<div style="display: flex; justify-content: space-between;"> <div> <p>7590 02/02/2006</p> <p>David J. Alexander Fina Technology, Inc. P.O. Box 674412 Houston, TX 77267-4412</p> </div> <div> <p>DOCKETED: <i>Submit Corrected Amendment</i> Date due: 3/2/2006</p> </div> <div> <p>EXAMINER VARGOT, MATHEU D</p> </div> </div>				
		ART UNIT	PAPER NUMBER	
		1732		

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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PTO-90C (Rev. 10/03)

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/099,850	Applicant(s) MCLEOD ET AL.	
	Examiner Mathieu D. Vargot	Art Unit 1732	

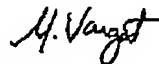
The MAILING DATE of this communication shall appear on the cover sheet with the correspondence address

The Appeal Brief filed on 08 November 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

- ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
- ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
- ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
- ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
- ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
- ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
- ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
- ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
- ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
- ☐ Other (including any explanation in support of the above items):

The headings for "Summary of the Invention" should be "Summary of the Claimed Subject Matter" and that for "Issues Presented" should be "Grounds of Rejection To Be Reviewed On Appeal".


 Mathieu D. Vargot
 Primary Examiner
 Art Unit: 1732

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: McLeod

Serial No.: 10/699,956

Confirmation No.: 5094

Filed: November 3, 2003

**For: Increasing Syndiotactic Propylene
Polymer Cast Film Line Speed**

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Group Art Unit: 1732

**Examiner: Vargot**

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**37 CFR 1.10**

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11/30/06  
Date

Signature \_\_\_\_\_

## TRANSMITTAL LETTER

In connection with the above identified application, Applicants respectfully resubmit the following in response to the Notice of Non-Compliant Appeal Brief dated January 19, 2006:

1. **Appeal Brief.**

Respectfully submitted,

Tenley R. Krueger

Tenley R. Krueger  
Registration No. 51,253

T.R. Krueger, P.C.

15503 F.M. 529 Rd., #521

**Houston, Texas, 77095-5400**

**Telephone: 832-465-0157**

Fascimile: 281-463-8012

Attorney for Appellant(s)

**COS-926 Appeal NC Transmittal**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**In re Application of: McLeod**

Serial No.: 10/699,956

Confirmation No.: 5094

Filed: November 3, 2003

## For: Increasing Syndiotactic Propylene Polymer Cast Film Line Speed

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Group Art Unit: 1732

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Examiner: Vargot

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Date \_\_\_\_\_

Signature \_\_\_\_\_

# APPEAL BRIEF

Applicants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 1732 dated July 7, 2005, finally rejecting claims 43-71.

### Real Party in Interest

The present application has been assigned to Fina Technology Inc., P.O. Box 674412, Houston, Texas 77267.

### Related Appeals and Interferences

Appellants assert that no other appeals, interferences or judicial proceedings are known to the Appellants, the Appellants' legal representative or Assignee that will

**COS-926 Appeal Brief**

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directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

#### **Status of Claims**

Claims 43-71 are pending in the application. Claim 53 stands rejected under 35 U.S.C. §112, second paragraph. Claims 43-44, 48, 52-53, 56, 64 and 66-71 stand rejected under 35 U.S.C. §102(b) and claims 45-47, 49-51, 54-55 and 57-63 stand rejected under 35 U.S.C. §103(a). The rejection of the pending claims is appealed. The pending claims are shown in the attached Appendix A.

#### **Status of Amendments**

Claims 43-71 were submitted to replace original claims 1-36. No amendments have been made to the pending claims.

#### **Summary of the Claimed Subject Matter**

The unique characteristics of syndiotactic polypropylene (sPP) not only make it useful in film formation, but also present unique processing challenges. In particular, processing sPP under conditions normally associated with processing isotactic polypropylene (iPP) may be problematic because molten sPP is tackier than molten iPP. See, specification, at least paragraph 5. The embodiments recited in the pending claims generally provide a process of sPP film formation.

#### **Grounds of Rejection to be Reviewed on Appeal**

1. The rejection of claims 43-44, 48, 52-53, 56, 64 and 66-71 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,245,857 (*Shamshour*.)
2. The rejection of claims 45-47, 49-51, 54-55, 57-63 and 65 under 35 U.S.C. §103(a) as being unpatentable over *Shamshour*.

### Arguments

- I. THE EXAMINER ERRED IN REJECTING CLAIMS 43-44, 48, 57-53, 56, 64 AND 66-71 UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY *SHAMSHOUM* BECAUSE *SHAMSHOUM* DOES NOT SHOW A SYNDIOTACTIC POLYPROPYLENE FILM

*Shamshoum* teaches highly isotactic polypropylene (iPP) films. Such films may incorporate a small amount (from about 0.01% to about 30%) of syndiotactic polypropylene (sPP) to reduce the brittleness of the iPP. *See*, column 2, at least lines 25-30. However, *Shamshoum* clearly teaches iPP film formation. *Shamshoum* (as is known in the art) defines the term iPP film as a film in which the majority of the polyolefin composition is highly isotactic polyolefin. *See*, column 2, at least lines 30-35.

In contrast, the present claims recite a "homopolymer of syndiotactic propylene (sPP) film". *See*, at least claim 71. The films enabled by the present specification are syndiotactic polypropylene films. *See*, specification, at least paragraphs 11 and 14. Accordingly, it is widely recognized in the art that sPP films are films in which the majority of the polyolefin composition is syndiotactic polypropylene. As discussed above, *Shamshoum* does not teach, show or suggest syndiotactic polypropylene films.

Therefore, reversal of the rejection is respectfully requested.

- II. THE EXAMINER ERRED IN REJECTING CLAIMS 45-47, 49-51, 54-55, 57-63 AND 65 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER *SHAMSHOUM* BECAUSE *SHAMSHOUM* DOES NOT TEACH, SHOW OR SUGGEST

The Examiner set forth the same arguments for the §103(a) rejection as the §102(b) rejection. Applicants distinguished *Shamshoum* from the pending claims in the above discussion and feel that repeating such arguments is unnecessary. Based on such previously presented arguments, Applicants respectfully request reversal of the rejection.